



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-124; C-570-125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that vertical shaft engines with displacements between 60cc and up to 99cc produced in the People's Republic of China (China) and exported to the United States, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from China. Interested parties are invited to comment on these preliminary results.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Benjamin A. Lubberda, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2185.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2021, the Department of Commerce (Commerce) published AD and CVD orders on small vertical engines from China.¹ On September 17, 2021, in response to a request from Briggs & Stratton, LLC (the petitioner),² Commerce initiated a circumvention inquiry to

¹ See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 23675 (May 4, 2021) (*Orders*).

² See Petitioner's Letter, "Request for Anti-Circumvention Inquiry Pursuant to Section 781(c) and/or Section 781(d) of the Tariff Act of 1930," dated July 30, 2021.

determine whether imports of engines with displacements between 60cc and up to 99cc produced in China and exported to the United States are “altered in form or appearance in minor respects” from in-scope merchandise such that they should be considered subject to the *Orders*.³ For a complete description of events that followed initiation of this inquiry, *see* the Preliminary Decision Memorandum.⁴

Scope of the *Orders*

The merchandise subject to the *Orders* is small vertical engines from China. For a complete description of the scope of the *Orders*, *see* the Preliminary Decision Memorandum.

Scope of the Circumvention Inquiry

This circumvention inquiry covers small vertical engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.

Statutory and Regulatory Framework

Section 781(c) of the Tariff Act of 1930, as amended (the Act), provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as subject merchandise has been “altered in form or appearance in minor respects... whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.”

While the Act is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally

³ *See Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People’s Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders—60cc up to 99cc Engines*; 86 FR 51866 (September 17, 2021) (*Initiation Notice*), and accompanying Issues and Decision Memorandum.

⁴ *See* Memorandum, “Preliminary Decision Memorandum for the Circumvention Inquiry,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁵ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.⁶ Each inquiry is highly dependent on the facts on the record and must be analyzed in light of those specific facts.⁷ Thus, along with the five factors enumerated above, Commerce may also consider the circumstances under which the products enter the United States, including, but not limited to, the timing of the entries and the quantity of merchandise entered during the circumvention review period.⁸

Preliminary Determination

We preliminarily determine that small vertical engines with displacements between 60cc and up to 99cc and engines with displacements of 99cc up to 225cc are not dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which the Zongshen Companies exported the engines with displacements between 60cc and up to 99cc.⁹

⁵ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁶ *Id.*; see also *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016).

⁷ See, e.g., *Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 26778 (June 9, 2017), and accompanying Preliminary Decision Memorandum, at “IV. Statutory and Regulatory Framework.”

⁸ *Id.*; see also, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People’s Republic of China*, 74 FR 33991, 33992-93 (July 14, 2009); *Brass Sheet and Strip from West Germany: Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990), unchanged in *Brass Sheet and Strip from Germany: Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); and *Small Diameter Graphite Electrodes from the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012).

⁹ In the less-than-fair-value investigation, Commerce found that Chongqing Zongshen General Power Machine Co., Ltd.; Chongqing Dajiang Power Equipment Co., Ltd.; and Chongqing Zongshen Power Machinery Co., Ltd. (collectively, the Zongshen Companies) should be treated as a single entity. See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical*

Because we find that the merchandise subject to this inquiry is not dissimilar to subject merchandise, we preliminarily determine that the engines at issue constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise, within the meaning of section 781(c)(1) of the Act. Also, we preliminarily determine that the affirmative circumvention finding should be applied on a countrywide basis.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>. A list of the topics discussed in the Preliminary Decision Memorandum is attached at the appendix to this notice.

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of small vertical engines between 60cc and up to 99cc produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on or after September 17, 2021 (*i.e.*, the date of the initiation of this inquiry).¹⁰ Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require cash deposits of estimated duties equal to the AD and CVD rates in effect for small vertical engines for each unliquidated entry of small vertical engines between 60cc and up to 99cc produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on

Circumstances, in Part, 85 FR 66932 (October 21, 2020), unchanged in *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part*, 86 FR 14077 (March 12, 2021). Absent information to the contrary, we continue to treat the Zongshen Companies as a single entity for the purposes of this inquiry.

¹⁰ *See Initiation Notice.*

or after September 17, 2021. The suspension of liquidation instructions will remain in effect until further notice.

Public Comment

Interested parties are invited to comment on this preliminary determination of circumvention and may submit case briefs and/or written comments within 14 days of the publication of this notice.¹¹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date on which the case briefs are due.¹² Parties who submit case briefs of rebuttal briefs in this inquiry are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹³ Case and rebuttal briefs should be filed electronically via ACCESS.¹⁴ Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically and received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 14 days after the date of publication of this notice.¹⁶ Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing at a later date.

Postponement of Final Determination

¹¹ Commerce is exercising its discretion, under 19 CFR 351.309(c)(1)(ii), to alter the time limit for filing of case briefs.

¹² Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ See 19 CFR 351.303.

¹⁵ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁶ See 19 CFR 351.310(c).

Section 781(f) of the Act provides that, to the maximum extent practicable, Commerce shall make its circumvention determinations within 300 days from the date of initiation of the inquiry. On July 14, 2022, we extended the final determination until August 25, 2022.¹⁷ We determine that it is not practicable to make a final determination in this circumvention inquiry by the current deadline of August 25, 2022, because Commerce will require additional time to review and analyze case and rebuttal briefs. Therefore, we are extending the time period for issuing the final determination in this inquiry by 103 days, to December 6, 2022.

Notification to Interested Parties

This affirmative preliminary circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225(i).

Dated: August 25, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

¹⁷ See Memorandum, “Extension of Anti-Circumvention Final Determination,” dated July 14, 2022.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

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